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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 783

GLORIA STOLLAR,

Petitioner.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

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OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported as *The People of the State of Illinois* v. *Gloria Stollar*, 31 Ill. 2d 154, 201 N. E. 2d 97, decided on May 20, 1964, and reprinted at Appendix 1 of the Petition.

JURISDICTION.

Since the proper raising of a substantial federal question in the state court proceeding is mandatory in order to invoke the Jurisdiction of the Supreme Court of the United States under 26 U. S. C. § 1257, it is the position

of the respondent that the petition, being substantially defective in this regard, must be denied, *Zucht* v. *King,* 260 U. S. 174; *Palmer Oil Corporation* v. *Amerada Corp.,* 343 U. S. 390.

QUESTION PRESENTED.

Whether the decision of the Supreme Court of Illinois, which affirmed an eighteen month contempt of court sentence imposed upon petitioner, is subject to review by this Court when the federal question which is sought to be raised had not been presented prior to the institution of this proceeding.

STATEMENT.

Initially, the relator deems it necessary to comment upon the liberties taken by petitioner in setting forth the nature and facts of the case (Petition, pp. 3, 5-6).

First, petitioner claims that "the questions presented in this petition were raised primarily as a result of the Supreme Court of Illinois' opinion affirming the order of the Probate Court of Cook County" (Petition, p. 5). Such is not the case. Nothing in the opinion of the Supreme Court of Illinois (Petition, App. 1-5), or in the original brief or petition for rehearing filed by petitioner in the Supreme Court of Illinois raises the question of whether petitioner was denied due process of law as a result of her sentence for contempt of court. The only question raised by petitioner and duly answered by the Illinois Supreme Court was whether Ch. 38, § 1-7, Ill. Rev. Stat. 1963, limited the permissible sentence that may be imposed for contempt of court. The Supreme Court of Illinois, in deciding such statutory issue contrary to the petitioner, neither sought to nor actually raised the constitutional issue here claimed by petitioner. For the petitioner to now attempt to create a federal constitutional issue in this court involving the question of sentencing, when no such issue was presented by her at any stage of the state court proceedings, is violative of the rule that the state court be apprised, with fair precision, of the federal claim and the grounds thereof.

Secondly, the implication arising from the statement that petitioner was arrested by being taken from her hospital bed immediately after giving birth to an illegitimate child (Petition, p. 3) is incorrect. The opinion of the

Supreme Court of Illinois (Petition, App. 2), as evidenced by the proceeding in the trial court (Abstract of Record, p. 44), is exceedingly clear on the point that a twelve day period had passed between the return day of the rule to show cause and the issuance of the body attachment, and the commencement of the hearing, which was postponed from November 2, 1962 to November 13, 1962, when it was determined that petitioner was under a doctor's care. Such documented facts are hardly comparable to the impression conveyed by the petitioner regarding the placing of her in custody.

Thirdly, the statements made by petitioner regarding her emotionally disturbed state, the need for psychiatric care, and the failure of the court to order a sanity hearing (Petition, p. 3) seem quite specious, for while such arguments were made before the Supreme Court of Illinois and were decided adversely to petitioner, they are not included as a basis of the theory set forth in the present petition.

Fourthly, the "summary" contempt proceedings to which petitioner was subjected was in fact conducted intermittently between November 13, 1964 and November 23, 1964 and is contained in a record totalling some 700 pages. The hearings produced testimony of other witnesses beside petitioner as well as closing arguments and various post trial motions. In this sense, petitioner's expression that the contempt action to which she was exposed was direct and prompt, or without delay or formality is a misconception of the existing facts of the case at bar.

On May 5, 1959, one Harry Stollar died (Abst. 80) leaving the major portion of his estate for the benefit of his minor daughter, Jacqueline. On July 8, 1959, Gloria Stollar, the wife of the deceased, was appointed guardian of the estate of the minor child and bonded in the amount of $71,000 (Abst. 8; Record 16). On August 10, 1959,

Gloria Stollar, hereinafter designated petitioner, was appointed executrix of her husband's estate and on November 2, 1959, filed an inventory of the estate, under oath, stating the full amount of the estate to be $47,784.90 (Abst. 1; Record 659). On November 9, 1959, an order was entered in the Probate Court of Cook County approving the inventory filed by the petitioner as true and correct and granting the guardian the sum of $200 per month for the support of the minor child, which amount was subsequently raised to $300 per month (Abst. 8, 9; Record 659). Between the commencement of proceedings in the Probate Court and October 24, 1960, the funds designated by the petitioner to be the entire proceeds of the estate were deposited in the Exchange National Bank of Chicago, and on the aforementioned date totalled $43,764.53 (Abst. 1). On October 24, 1960, a petition was filed by Arthur Bluestein, attorney for the guardian of the minor, who had represented the deceased in prior business transactions, on behalf of the petitioner, requesting that the remaining funds should be transferred from the Exchange National Bank to various other depositories for the sake of convenience (Abst. 10, 11). An order was then signed by the Probate Court of Cook County allowing the transfer of $7500.00 cash to 1) Bell Savings and Loan Association; 2) Chicago Federal Savings and Loan Association; 3) First Federal Savings and Loan Association; and 4) Belmont National Bank of Chicago which accounts were subject to order of Court (Abst. 10, 11; Record 703). A further transfer of $13,764.53 was made to the Aetna State Bank, at 2375 North Lincoln Avenue, Chicago, Illinois (Abst. 11; Record 703).

Unbeknown to the Court, the petitioner received shortly after her husband's death, the cash proceeds of certain insurance policies paid by the Prudential Life Insurance Company on the life of Harry Stollar totalling $24,296.05 (Abst.

9; Record 712, 724). The checks were payable to "Gloria Stollar as Guardian of Jacqueline Stollar." (Abst. 9; Record 724, 712). After petitioner unsuccessfully attempted to induce the insurance agent, one Sol Palles, with the sum of $2000.00 to change the name of the beneficiary of the checks solely to herself (Abst. 57, 76, 77) she deposited the checks, as originally made out, with the Aetna State Bank on July 30, 1959 (Abst. 123).

The account in which these funds were deposited was entitled "Gloria Stollar, as guardian of Jacqueline Stollar" (Abst. 9). The account was closed on June 8, 1960, by the petitioner with a final withdrawal of $5100 (Abst. 62). At no time prior to the institution of the contempt proceedings did the petitioner disclose the receipt by her of the proceeds of the two Prudential policies or of their existence to the Court, or report to the Probate Court the total amount or any part of the remuneration from the policies as part of the inventory, or request permission of the Court to withdraw or expend funds from these policies (Abst. 49, 73, 74).

On June 15, 1961, the petitioner, without disclosing her actions to her attorney, Arthur Bluestein, solicited the aid of attorney Morton Kovin to petition the Probate Court for the transfer of all remaining funds of the estate to the Aetna State Bank (Abst. 115-116). The petitioner, once in possession of the court order allowing such transfer of funds, carried out such transfer although she did not have in her possession three of the four bank books of the depositories in which the funds were then stored (Abst. 67). The bank books were then in the hands of Attorney Bluestein, who had made various attempts without success to meet with petitioner and discuss the financial situation of the estate (Abst. 92-93). The transfer was effected by petitioner signing lost bank book affidavits at those institutions at which she did not possess the bank book, al-

though having full knowledge of their location (Abst. 67; Record 670). Petitioner retained Attorney Kovin stating to him that she had discharged her previous attorney and that, under the circumstances, communication between the two was unnecessary (Abst. 121).

In August of 1961, approximately one year before the institution of the present contempt case, a rule to show cause was issued against petitioner for failure to file a final account and make distribution of assets as executrix of the estate of Harry Stollar, deceased, in accordance with the final account (Record 99-103). A writ of attachment for contempt was issued on September 7, 1961, for failure to respond to the rule to show cause on the date designated (Record 104). A hearing on the question of removal of plaintiff in error was then set, with petitioner free on her own $1000 recognizance bond (Record 105). On November 24, 1961, petitioner was ordered to pay $1960.60, which sum represented fees, costs, and claims against the estate, payable at the rate of $100 per month (Record 111-112). Petitioner made the $100.00 payment on December 5, 1961, which check was returned as lacking sufficient funds (Record 113). On January 19, 1962, the court ordered petitioner to pay $1800.00 toward the aforementioned obligation (Record 116) which payment, when made by petitioner, was a check drawn on a nonexistent account (Record 123). A contempt *mittimus* was then issued for petitioner's arrest on January 25, 1962, for the violation of court orders (Record 123). Petitioner was released from custody with the payment to the Probate Court Clerk of the amount due by her father, Eugene Roseth.

On September 24, 1962, Attorney Arthur Bluestein, after obtaining knowledge of the financial condition of the estate of Jacqueline Stollar, minor, through correspondence with the President of the Aetna State Bank and after unsuccessfully attempting to learn the manner and extent of the

petitioner's expenditures not sanctioned by the Court, filed a petition before the Probate Court of Cook County in which he informed said court of certain acts of misconduct perpetrated by the petitioner (Abst. 1). The Court, on September 26, 1962, appointed Edward Arkema guardian *ad litem* to investigate all matters in connection with Bluestein's petition (Abst. 7). On October 17, 1962, the report of the guardian *ad litem* disclosed certain misconduct on the part of petitioner's handling of the funds of the estate; to wit, the filing of a false inventory and current account in which there was a gross failure to disclose cash benefits accruing to the estate from two insurance policies, and unauthorized withdrawals of funds during the course of several years (Abst. 7-14). A rule to show cause was issued on the same date, returnable November 2, 1962 (Abst. 16). Upon petitioner's failure to appear, a writ of attachment was issued (Abst. 18) said writ not fully capable of execution, since petitioner had given birth to a child and was under doctor's care (Abst. 44).

Upon the release of petitioner from medical care, she was brought before the Probate Court. represented by counsel, and given a full and complete hearing on the contempt charges. At the hearing, at which other witnesses also testified, petitioner fully related the events of the preceding years, admitting her failure to file a *proper* inventory, and current account, admitting her use of the insurance proceeds without disclosure, and admitting the course of her conduct by which she was, without authorization able to withdraw funds (Abst. 48-74, 137-151). The hearing, which commenced on November 13, 1962, terminated on November 23, 1962, with the imposition of sentence upon petitioner for her separate acts of contempt of court (Abst. 153).

Upon a full accounting presented to the court, it was established that the petitioner, without authorization, ex-

pended $59,410.58 (Record 603). In addition to the contempt conviction, petitioner was removed as guardian of the estate of the minor, and a guardian of the person of the minor was appointed.

During the contempt hearing, testimony indicated that all that remained of the $73,000, once the total sum of the estate, was the sum of $81.09 (Abst. 124).

On December 12, 1962, post trial motions filed by petitioner—Motion to Arrest Judgment, Motion to Reconsider, and Motion for a New Trial—were denied, the court allowing a Motion to Stay Mittimus (Abst. 153). Subsequent to these motions, a writ of error was taken to the Supreme Court of Illinois.

On January 17, 1964, that Court denied the motion of the guardian *ad litem* to transfer this cause to the Appellate Court for failure to demonstrate direct appellate jurisdiction.

The Supreme Court of Illinois affirmed the decision of the Probate Court of Cook County on May 20, 1964, rehearing denied September 25, 1964.

ARGUMENT.

The Supreme Court of Illinois, in affirming the findings of the Probate Court of Cook County, decided the three specific issues raised by petitioner's brief. The issues were: 1) failure to conduct a sanity hearing, and 2) failure to grant a continuance, both of which, it was asserted, violated petitioner's federal constitutional rights by denying due process of law. Neither of these issues are cited in petitioner's brief as a basis for the granting of the petition, and, therefore, must be deemed to have been waived for purposes of attaining a writ of *certiorari*. The third issue, that of the excessiveness of the eighteen month contempt sentence, was clearly raised as a statutory issue and was neither expressly nor impliedly characterized as a federal constitutional issue for determination by the Supreme Court of Illinois. The decision of the latter body was strictly limited to the interrelationship of Ch. 38, § 1-7 and Ch. 38, § 1-3, Ill. Rev. Stat. 1963. Further, the petition for rehearing filed by petitioner in the Supreme Court of Illinois categorically failed to raise the constitutional question which has been advanced before this tribunal.

With the above factual pattern before this Court, the issue before it for determination is, rather than the question of whether petitioner was denied due process of law in being the recipient of an eighteen month sentence for contempt of court, whether such decision is subject to review when the federal question which is sought to be raised has not been presented, but could have been, prior to the institution of this proceeding.

It is the contention of the respondent that the substantive federal question which petitioner has raised in this Court

has, in fact, been raised for the first time; that under no circumstances can it be stated that such question had been properly raised in any of the prior proceedings; and that the theory that the decision of the Supreme Court of Illinois prompted the federal constitutional issue is unfounded, since both that decision, as well as the petition for rehearing, offer no minimal criteria on which to base valid jurisdictional grounds.

It is a generally accepted rule of this Court that a substantial federal question must have been raised and brought to the State court's attention with fair precision, *Zucht* v. *King*, 260 U. S. 174. *Palmer Oil Co.* v. *Amerada Corp.*, 343 U. S. 390. The statement best characterizing this mode of procedure is found in *Oxley Stave Co.* v. *Butler County*, 166 U. S. 648 at 655, where the Court stated:

> ". . . the jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right."

Moreover, it must not only be made to appear that some particular provision of the Federal Constitution, as opposed to the State Constitution, was raised, *New York Central & H. R. Co.* v. *New York*, 186 U. S. 269, but specification of the stage in the proceedings where the federal question sought to be reviewed was considered is of paramount importance (Rule 23 (1) (f), Rules of Supreme Court of United States). Needless to say, all such procedure has been violated in this case.

Petitioner, however, in attempting to formulate the issue raised within the proper framework of 26 U. S. C. 1257 (3), impliedly asserts that the decision of the Supreme Court of Illinois on the issue of statutory construction was the first instance that petitioner could have possibly raised the

constitutional issue, and that the petition for rehearing so accomplished this objective, thus preserving the substantive issue for determination here. Such reasoning would have one believe that the state statute was given such a new and unanticipated construction which threatens rights under the federal constitution. *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. 673.

The respondent contends that the facts portend a contrary interpretation, for A) the conviction and sentence of petitioner in the Probate Court of Cook County placed into effect the vehicle whereby petitioner could have raised the constitutional claim immediately, but failed to do so, and B) the prior proceedings clearly show that the constant intention of petitioner was limited to the issue of statutory *construction* and not statutory *validity.*

The decision by the Supreme Court of Illinois has not, by its decision, created a situation where the litigant had no prior opportunity to assert the particular federal question. Such opportunity was presented to her from the time that a motion for a new trial was due and filed through to the briefing stages on appeal. The opportunity was not seized. Instead, petitioner seeks now to by-pass all regular channels of procedure in the hope of "striking a resonant chord" so that the errant procedure heretofore followed will be relegated to a secondary position, with the substance of her claim the primary objective. It is evident that the sentencing of petitioner to a term in excess of one year, coupled with the unequivocal language of Ch. 38, § 1-3, exempting contempt from the limitation of one year as regards punishment, clearly set the stage for the initiation of the federal question. For petitioner to now state that such was not apparent when the sentence was entered by the Probate Judge is not reasonable.

But even if it be assumed that the decision of the highest

state court is as petitioner contends, her failure to specifically raise the federal constitutional question in the petition for rehearing is fatal.

In summary, it is the position of Respondent that the emergence of the federal question resulted, initially, in the petition for Writ of Certiorari and, as such, constitutes tardiness which bars the granting of the Writ. Further, even if the first opportunity to raise such federal question resulted from the decision of the highest state court, petitioner's absolute failure to specifically raise the federal constitutional grounds in her petition for rehearing bars further review.

CONCLUSION.

For the aforementioned reasons, relator respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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